

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

EARL OLDHAM, Plaintiff, v. O.K. FARMS, INC., Defendant.	Case No. CIV-15-384-RAW
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ORDER & OPINION

This action involves a contract between Plaintiff and Defendant whereby Plaintiff was to grow poultry for Defendant. After Defendant terminated the contract, Plaintiff brought this action for breach of contract. The matter came on for hearing on August 18, 2016. At the hearing, the court granted Defendant's motion for summary judgment [Docket No. 30]. This order memorializes the court's ruling. Viewing the evidence in the light most favorable to Plaintiff,¹ the court finds there is no genuine dispute as to any material fact and Defendant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56.

The following undisputed material facts (hereinafter "UMF") listed by Defendant in its motion for summary judgment were not disputed by Plaintiff:

- Plaintiff does not dispute that the terms of the contract between Plaintiff and Defendant granted Defendant the right to terminate the contract upon 90-days written notice if Plaintiff breached any term, failed to care for or caused damage to Defendant's property, or abandoned or neglected the birds. Defendant's UMF numbers 14-28.
- Plaintiff does not dispute that he understood that Defendant could terminate the contract if he abandoned or neglected the birds. Defendant's UMF number 17.
- Plaintiff also does not dispute that the birds were Defendant's property. Defendant's UMF number 19.

¹ Kimzey v. Flamingo Seismic Solutions, Inc., 696 F.3d 1045, 1048 (10th Cir. 2012).

- Plaintiff does not dispute that after House #1 flooded, he told one of Defendant's representatives that he "could just get all these *expletive*² birds."³ Defendant's UMF number 51.
- Plaintiff does not dispute that Defendant then came and collected all of the birds, including those in his other two poultry houses that were unaffected by the flood. Defendant's UMF number 57.
- Plaintiff does not dispute that Defendant provided him with 90-days written notice of termination in accordance with the contract. Defendant's UMF number 66.

Even if the flooding of Plaintiff's House #1 was an "act of God," as Plaintiff argues, negating Plaintiff's duty as to the birds in that house, Plaintiff told Defendant to take all of the birds, including those in the other two houses, thereby abandoning those birds and failing to take care of Defendant's property. Thereafter, Defendant had the right under the contract to terminate upon 90-days notice, which it did. Defendant did not breach the contract and is entitled to summary judgment. The motion [Docket No. 30], therefore, is GRANTED.

IT IS SO ORDERED this 18th day of August, 2016.



Ronald A. White
United States District Judge
Eastern District of Oklahoma

² Plaintiff disputes the use of an expletive, but otherwise does not dispute this fact.

³ Plaintiff was growing Defendant's birds in three houses.